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 2 Kristen E. Drake, State Bar No. 202827
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 9 Attorneys for Defendants
 10 SAFER TECHNOLOGIES, INC.,
 11 CERMA TECHNOLOGY, INC.,
 12 GEORGE ACKERSON, MARY STRANAHAN,
 13 NICHOLAS STREIT and EDWARD HALBACH

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 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN JOSE DIVISION

18
 19 MOTOR WORKS LLC,

20 Case No.: 08-CV-03608 JW

21 Plaintiff,

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**DECLARATION OF KRISTEN E. DRAKE
 IN SUPPORT OF DEFENDANTS'
 MOTION TO SHORTEN TIME FOR
 HEARING OF DEFENDANTS' MOTION
 FOR LEAVE TO FILE A MOTION FOR
 RECONSIDERATION OF THE COURT'S
 ORDER GRANTING IN PART AND
 DENYING IN PART DEFENDANTS'
 MOTION FOR SUMMARY JUDGMENT**

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1 2. Defendants have filed a Motion for Leave to File a Motion for Reconsideration of
 2 the Court's Order Granting in Part and Denying in Part Defendants' Motion for Summary
 3 Judgment or in the Alternative, Defendants' Motion to Reopen Discovery to Compel Responses
 4 to Defendants' Outstanding Discovery and Complete the Discovery Process which is set for
 5 hearing on January 11, 2010. Defendants move to shorten time for hearing on this motion and
 6 propose that the hearing be set for December 21st, any opposition papers filed by December 11th
 7 and any reply papers filed by December 14th.

8 3. Defendants move to shorten time because the pendency of this lawsuit, having no
 9 factual support whatsoever, has significantly hampered Defendant Safer Technologies business
 10 operations and resulted in significant lost sales of engine additive under its registered CERMAX
 11 brand name.

12 4. The Court's Summary Judgment Order identifies Plaintiff Motor Works as the
 13 *manufacturer* of the product at issue (Order, page 7, line 22) and heavily relies on a case between
 14 a manufacturer and a distributor. However, both Plaintiff and Defendants in this case are
 15 nonexclusive *distributors* of the engine additive product at issue, a chemical product named
 16 BYK-333. The *manufacturer* of the product is a German based company, ALTANA AG.

17 5. Thus, Defendants do not understand the Court's reliance on *Sengoku Works Ltd. v.*
 18 *RMC International, Ltd.*, 96 F.3d 1217 (9th Cir. 1996). This case was not cited by either party
 19 and involves a lawsuit by a product *manufacturer* against a product *distributor* for violation of an
 20 oral exclusive distribution agreement. Plaintiff Motor Works falsely alleges it is the manufacturer
 21 of BYK-333, basing its infringement and related claims on this falsehood. However, the
 22 undisputed facts establish that the statement is false, and further establish that the mark/name in
 23 dispute, CERMAX, is registered to Defendant Safer Technologies, Inc.

24 6. In an effort to obtain a stipulation to shorten time for hearing on Defendants'
 25 motion, I e-mailed opposing counsel Robert Weems on Friday, December 4, 2009. A true and
 26 correct copy of the e-mail is attached hereto as Exhibit "A". Further, I left a voicemail message
 27 for Mr. Weems on Monday, December 7, 2009. Mr. Weems did not respond to my e-mail or
 28 voicemail message.

1 7. Previously, in November 2008, defendants received an order extending the time to
2 respond to plaintiff's complaint.

3 8. I am over eighteen years of age and have the capacity to perceive and recollect. If
4 called upon to testify, I am competent to testify to the foregoing matters, which are within my
5 personal knowledge.

6

7 I declare under penalty of perjury under the laws of the United States that the foregoing is
8 true and correct and that this declaration was executed on December 8, 2009.

9

10 _____
11 /s/ *Kristen E. Drake*
12 Kristen E. Drake

Exhibit “A”

From: craigielaw@aol.com

To: rcweems@weemslawoffices.com

Cc: JimHanavan@aol.com

Subject: Stipulation to Shorten Time on Motion

Date: Fri, Dec 4, 2009 3:17 pm

Attachments: Notice_of_Motion_for_Leave.doc (43K), Brief_Motion_for_Leave.doc (48K)

Dear Mr. Weems,

Enclosed is the notice and our brief in support of our Motion For Leave to File a Motion for Reconsideration of the Court's Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment or in the alternative Defendants' Motion to Reopen Discovery to Compel Responses To Defendants' Outstanding Discovery and Complete the Discovery Process.

Please advise as to whether you would agree to stipulate to a shortened-time schedule for this motion. We propose that the hearing be set for December 21st, any opposition due by December 11th and any reply due by December 14th. Please advise if that is acceptable.

Thank you,
Kristen Drake